

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature Second Regular Session - 2012

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 399

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO APPLICATIONS TO APPROPRIATE WATER; AMENDING SECTION 42-202, IDAHO CODE, TO PROVIDE THAT IF THE USE OF DIVERSION WORKS OR AN IRRIGATION SYSTEM IS REPRESENTED BY SHARES OF STOCK IN A CORPORATION OR IF SUCH WORKS OR SYSTEM IS OWNED OR MANAGED BY AN IRRIGATION DISTRICT, APPLICATIONS SHALL NOT BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES WITHOUT THE CONSENT OF SUCH CORPORATION OR IRRIGATION DISTRICT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-202, Idaho Code, be, and the same is hereby amended to read as follows:

42-202. APPLICATION TO APPROPRIATE WATER -- CONTENTS -- FILING FEES -- DISPOSITION OF FEES -- RECORD OF RECEIPTS. (1) For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation. Provided however, if the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned or managed by an irrigation district, no such application may be approved by the director of the department of water resources without the consent of such corporation or irrigation district.

Such application must set forth:

(a) The name and post-office address of the applicant.

(b) The source of the water supply.

(c) The nature of the proposed use or uses and the period of the year during which water is to be used for such use or uses.

(d) The location of the point of diversion and description of the proposed ditch, channel, well or other work and the amount of water to be diverted and used.

(e) The time required for the completion of construction of such works and application of the water to the proposed use.

(2) An application proposing an appropriation of water by a municipal provider for reasonably anticipated future needs shall be accompanied by sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the def-

1 initions and requirements specified in this chapter. The service area need
2 not be described by legal description nor by description of every intended
3 use in detail, but the area must be described with sufficient information to
4 identify the general location where the water under the water right is to be
5 used and the types and quantity of uses that generally will be made.

6 (3) Whenever it is desired to appropriate and store flood or winterflow
7 waters, the applicant shall specify in acre feet the quantity of such flood
8 or winterflow waters which he intends to store, but for irrigation purposes
9 he shall not claim more than five (5) acre feet of stored water per acre of
10 land to be irrigated, nor, in the event of the filing of an application claim-
11 ing both normal flow and flood water and winterflow water, shall the total
12 amount of water claimed exceed the equivalent of a continuous flow during the
13 irrigation season of more than one (1) cubic foot per second for each fifty
14 (50) acres of land to be irrigated, or more than five (5) acre feet of stored
15 water for each acre of land to be irrigated.

16 (4) The application shall be accompanied by a plan and map of the pro-
17 posed works for the diversion and application of the water to a beneficial
18 use, showing the character, location and dimensions of the proposed reser-
19 voirs, dams, canals, ditches, pipelines, wells and all other works proposed
20 to be used by them in the diversion of the water, and the area and location of
21 the lands proposed to be irrigated, or location of place of other use.

22 (5) If the application involves more than twenty-five (25) cubic feet
23 per second of water or the development of more than five hundred (500) the-
24 oretical horsepower, or impoundment of water in a reservoir with an active
25 storage capacity in excess of ten thousand (10,000) acre feet, the applicant
26 may be required by the director of the department of water resources to fur-
27 nish a statement of the financial resources of the corporation, association,
28 firm or person making the application, and the means by which the funds nec-
29 essary to construct the proposed works are to be provided, and the estimated
30 cost of construction; and if such application is made by a corporation, the
31 amount of its capital stock, how much thereof has been actually paid in, and
32 the names and places of residence of its directors; and if for the generation
33 of power or any other purpose than irrigation or domestic use, the purpose
34 for which it is proposed to be used, the nature, location, character, capac-
35 ity and estimated cost of the works, and whether the water used is to be and
36 will be returned to the stream, and if so, at what point on the stream.

37 (6) In case the proposed right of use is for agricultural purposes, the
38 application shall give the legal subdivisions of the land proposed to be ir-
39 rigated, with the total acreage to be reclaimed as near as may be; provided,
40 that no one shall be authorized to divert for irrigation purposes more than
41 one (1) cubic foot of water per second of the normal flow for each fifty (50)
42 acres of land to be so irrigated, or more than five (5) acre feet of stored
43 water per annum for each acre of land to be so irrigated, unless it can be
44 shown to the satisfaction of the department of water resources that a greater
45 amount is necessary. Provided further, that the plan of irrigation submit-
46 ted shall provide for the distribution of water to within not more than one
47 (1) mile of each legal subdivision of the land proposed to be reclaimed by the
48 use of such water; provided also, that in the case of all ditches designed to
49 have a capacity of ten (10) cubic feet per second or less, such map showing
50 the location of such ditch, and the place of use of such water, or the loca-

1 tion of the lands to be irrigated, may be upon blanks furnished by the depart-
2 ment of water resources.

3 (7) No application shall be accepted and filed by the department of wa-
4 ter resources until the applicant shall have deposited with the department a
5 filing fee as in this chapter provided.

6 (8) All moneys received by the department of water resources under the
7 provisions of this chapter shall be deposited with the state treasurer, and
8 such sums as may be necessary shall be available for the payment of the ex-
9 penses of the department of water resources incurred in carrying out the pro-
10 visions of this chapter.

11 (9) Such expense shall be paid by the state controller in the manner
12 provided by law, upon vouchers duly approved by the state board of examin-
13 ers, for the work performed under the direction of the department of water
14 resources. The department of water resources shall keep a record of all fil-
15 ing fees received in connection with applications for permits to appropriate
16 public waters.

17 (10) Provided further, that rights initiated prior to the enactment of
18 this amendment, so far as it pertains to flood and winterflow waters, shall
19 not be affected thereby.

20 (11) Provided further, that water rights held by municipal providers
21 prior to July 1, 1996, shall not be limited thereby.